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No. 75-88

In the Supreme Court of the United States

OCTOBER TERM, 1975

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

RUBY M. LUCAS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

BRIEF FOR THE APPELLANT

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OPINION BELOW

The opinion of the district court is not yet reported.

JURISDICTION

The order of the district court, holding unconstitutional certain provisions of Sections 202(d)(3) and 216(h)(3)(C)(ii) of the Social Security Act, 42 U.S.C. 402(d)(3) and 416(h)(3)(C)(ii), was en-

tered on March 21, 1975 (J.S. App. B, pp. 28a-29a).[1] A notice of appeal to this Court was filed on April 15, 1975 (J.S. App. C, p. 30a). On June 4, 1975, Mr. Justice Brennan extended the time for docketing the appeal to and including July 14, 1975. The appeal was docketed on that date. This Court noted probable jurisdiction on October 6, 1975. The jurisdiction of this Court is conferred by 28 U.S.C. 1252.

QUESTION PRESENTED

Whether Sections 202(d)(3) and 216(h)(3)(C)(ii) of the Social Security Act deny due process insofar as they condition certain illegitimate children's eligibility for surviving child's insurance benefits upon a showng that a deceased wage-earner was their parent and was, at the time of his death, living with them or contributing to their support.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The pertinent provisions of the Fifth Amendment and the Social Security Act are set forth in J.S. App. D, pp. 31a-33a.

STATEMENT

1. This is an appeal from a decision of a single-judge district court holding unconstitutional Sections 202(d)(3) and 216(h)(3)(C)(ii) of the Social Secu-

[1] The court's order does not refer directly to the constitutional issue, but that order is based upon the court's decision, set forth in its opinion, that the statutory bar to the payment of benefits to appellees was unconstitutional.

rity Act, 42 U.S.C. 402(d)(3) and 416(h)(3)(C)(ii). The constitutionality of these statutes is presently before the Court in *Norton* v. *Mathews*, No. 74-6212, question of jurisdiction postponed until hearing on the merits, June 30, 1975. We therefore only briefly summarize the statutory scheme here.

Surviving child's insurance benefits are payable to children under the age of 18 (or, in the case of full-time students, under the age of 22) who were dependent upon a deceased wage-earner at the time of his death. Section 202(d)(1)(B) and (C) of the Act. The Act establishes a presumption of dependency in the case of legitimate children who have not been adopted by another individual. Section 202(d)(3) of the Act. A similar presumption applies to illegitimate children who satisfy certain statutory criteria.[2]

Children who do not satisfy any of these criteria, *i.e.*, legitimate children who have been adopted by another individual and illegitimate children who do not have any of the statutory indicia of dependency, are not presumed to have been dependent upon their deceased father. In order to receive surviving child's insurance benefits, such children must show that the

[2] Dependency is presumed in the case of an illegitimate child (1) whose parents went through a marriage ceremony that was rendered invalid by a non-obvious legal impediment or (2) whose father (a) acknowledged his paternity in writing, (b) had been decreed by a court to be the child's father, or (c) had been ordered by a court to support the child because the child was his son or daughter. Sections 202(d)(3) and 216(h)(2)(B) and (3) of the Act.

deceased wage-earner had been living with them or contributing to their support at the time of his death. Sections 202(d)(3) and 216(h)(3)(C)(ii) of the Act.

2. Appellees are illegitimate children who applied for surviving child's insurance benefits on the earnings account of their deceased father, Robert E. Cuffee. The Secretary determined that appellees had failed to demonstrate either that any of the statutory presumptions of dependency were applicable to their case (Tr. 43)[3] or that Cuffee had been contributing to their support or living with them at the time of his death (Tr. 43, 45). The Secretary accordingly denied their application for benefits after a full administrative hearing (Tr. 4, 45).

Having exhausted all available administrative remedies, appellees commenced this suit in the United States District Court for the District of Rhode Island pursuant to Section 205(g) of the Act, claiming, first, that the Secretary's decision was not supported by substantial evidence and, subsequently, that Sections 202(d)(3) and 216 (h)(3)(C)(ii) of the Act deny due process insofar as they require certain illegitimate children to demonstrate dependency as a condition of eligibility for surviving child's insurance benefits.[4] The district court held those statutory pro-

[3] "Tr." refers to the transcript of the administrative proceedings.

[4] The district court initially held that the Secretary's factual determination that appellees did not meet the requirements of the statute was supported by substantial evidence,

visions unconstitutional (J.S. App. A, pp. 1a-27a) and ordered the payment of benefits to appellees (J.S. App. B, pp. 28a-29a).

ARGUMENT

THE STATUTORY SCHEME DOES NOT VIOLATE THE DUE PROCESS CLAUSE.

The constitutional issue involved in this case, and the sole question presented, is identical to the constitutional issue raised in *Norton* v. *Mathews*, No. 74-6212, question of jurisdiction postponed to hearing on the merits.[5] That question concerns the constitutional validity of Sections 202(d)(3) and 216(h)(3)(C)(ii) of the Social Security Act, 42 U.S.C. 402(d)(3) and 416(h)(3)(C)(ii), which condition certain ille-

but remanded the matter to the Secretary to determine whether appellees were legitimate children under state law as the issue of a valid common law marriage (J.S. App. A, pp. 6a-8a). After the Secretary determined that they were not, appellees sought reversal of the Secretary's decision, and also challenged for the first time the constitutionality of Sections 202(d)(3) and 216(h)(3)(C)(ii) of the Act. The district court found the Secretary's determination concerning common law marriage to be supported by substantial evidence and referred the issue of the constitutionality of the statute to a three-judge court. When appellees disavowed their original motion to enjoin application of Section 216(h)(3)(C)(ii), the three-judge district court that had been convened remanded the case for determination by a single judge (J.S. App. A, pp. 9a-10a). See *Flemming* v. *Nestor*, 363 U.S. 603.

[5] Unlike *Norton*, this case presents no issue concerning the jurisdiction of either the district court to hear the case initially or of this Court to hear the appeal.

gitimate children's eligibility for child's insurance benefits upon a showing that the deceased wage-earner was their father and was, at the time of his death, either living with them or contributing to their support. In *Norton*, a three-judge district court sustained the constitutionality of the statutory scheme. In the instant case, a single-judge district court has held that scheme unconstitutional.

In our *Norton* brief (pp. 27-43), we show that Sections 202(d)(3) and 216(h)(3)(C)(ii) fully comport with the Due Process Clause of the Fifth Amendment, and we refer the Court to that discussion in support of our appeal here.[6] In summary, we argue in *Norton* that the requirement that certain illegitimate children demonstrate that they were dependent on their father when he died is reasonably related to legitimate legislative purposes. We show that the Social Security Act is intended to provide benefits to surviving dependent children of deceased wage-earners, not to those who might have claimed support but did not do so; it is designed to replace lost support, not to provide a supplementary income to the needy. In order to further this purpose effectively, it is appropriate to avoid the serious administrative burdens that would result from the need to make dependency determinations in each case. Accordingly, Congress has identified those situations in which there is a plausible basis for presuming dependency, and has

[6] We are furnishing counsel for appellees with a copy of our brief in *Norton*.

required proof of actual support only in those cases in which there is no basis for such a presumption.[7]

CONCLUSION

For the reasons stated in our brief in *Norton*, the judgment of the district court should be reversed.

Respectfully submitted.

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[7] We note also (*Norton* brief, pp. 40-41) that the requirement that the claiming child prove either that he was living with or supported by the wage-earner at the time the wage-earner died tends to eliminate the need to make paternity determinations in difficult cases and reduces the likelihood of fraudulent claims.

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